

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Daniel Lynn Conley,

Case No. 21-CV-0984 (DSD/KMM)

Petitioner,

v.

REPORT AND RECOMMENDATION

Tracy Beltz, Warden,

Respondent.

Petitioner Daniel Lynn Conley commenced this action by filing a motion to extend the deadline for him to pursue habeas corpus relief under 28 U.S.C. § 2254. *See* ECF No. 1. The limitations period for federal habeas relief from a state judgment is established by statute, *see* 28 U.S.C. § 2244(d), and the Court does not have the authority to “extend” that limitations period, as Mr. Conley requests. *See, e.g., Thoresen v. Titus*, No. 20-CV-0769 (ECT/ECW), 2020 WL 1977251, at *1-2 (D. Minn. Mar. 26, 2020); *Knutson v. McNurlin*, No. 15-CV-2807 (DSD/BRT), 2015 WL 5472805, at *1 (D. Minn. Sept. 16, 2015). The limitations period may in certain circumstances be equitably tolled, but only where the petitioner has diligently pursued his rights throughout the period preceding the filing of the petition and extraordinary circumstances beyond the petitioner’s control prevented the petitioner from seeking relief earlier. *See Holland v. Florida*, 560 U.S. 631, 649 (2010). That said, the limitations period cannot be tolled *prospectively*; until the habeas petition is actually filed by the petitioner, this Court cannot say that the petitioner acted diligently throughout the period preceding the filing.

See Knutson, 2015 WL 5472805, at *2 (“This Court simply cannot know, at this juncture, whether Knutson will diligently pursue his rights over the next five months and, more importantly, whether he will be prevented from timely filing a federal habeas petition due to some extraordinary circumstance.”).

Accordingly, Mr. Conley’s motion for an extension should be denied and this matter dismissed.¹

RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED THAT:

1. The motion for an extension to file a habeas petition of petitioner Daniel Lynn Conley [ECF No. 1] be DENIED.
2. This matter be DISMISSED.

Date: May 12, 2021

s/ Katherine Menendez
Katherine Menendez
United States Magistrate Judge

¹ This Court notes that Mr. Conley previously sought relief from the same sentence that he intends to challenge in his forthcoming habeas petition. *See Conley v. Smith*, No. 13-1069 (PAM/JJK), 2013 WL 5567453 (D. Minn. Oct. 9, 2013) (incorrect caption listed in electronic database). Accordingly, it is overwhelmingly likely that any petition now filed by Mr. Conley would be “second or successive” within the meaning of 28 U.S.C. § 2244(b) and that authorization of the United States Court of Appeals for the Eighth Circuit would be required before Mr. Conley could proceed on the petition.

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).